

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MCGRAW-HILL GLOBAL EDUCATION :
HOLDINGS, LLC, PEARSON EDUCATION, :
INC., and CENGAGE LEARNING, INC., :

Plaintiffs, :

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 04/20/2018

v. :

TURCIOS, *et al.* :

Defendants. :

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GREGORY H. WOODS, United States District Judge:

Defendant Nebraska Book Company (“NBC”) seeks to sever Plaintiffs McGraw-Hill Global Education Holdings, LLC, Pearson Education, Inc., and Cengage Learning, Inc.’s (collectively, “Plaintiffs”) claims against NBC from its claims against the other defendants in this action. Def.’s Mot. to Sever, Dkt. No. 105 (“Def.’s Mot.”), at 12-15. Plaintiffs do not oppose NBC’s motion. In a separate letter motion, Plaintiffs seek leave to file an amended complaint. Pls.’ Mot. for Leave to File a Second Am. Compl., Dkt. No. 120. NBC consents to Plaintiffs’ motion, and the remaining defendants are in default or have not been served. *Id.* at 2 & n.2. For the reasons that follow, NBC’s motion to sever, and Plaintiffs’ request for leave to file an amended complaint, are granted.

I. MOTION TO SEVER

Rule 21 of the Federal Rules of Civil Procedure provides that a court may “sever any claim against a party.” Fed R. Civ. P. 21. “The decision whether to grant a severance motion is committed to the sound discretion of the trial court.” *New York v. Hendrickson Bros.*, 840 F.2d 1065, 1082 (2d Cir. 1988). Plaintiffs do not oppose this motion. Therefore, NBC’s motion to sever is granted. Pls.’ Resp. to Def.’s Mot. to Sever, Dkt. No. 107, at 1.

At the end of its memorandum of law in support of its motion to sever, NBC purports to

move to dismiss Plaintiffs' claims against it. *See* Def.'s Mot. at 12-15. However, NBC has not filed a pre-motion submission regarding a proposed motion to dismiss as required by the Court's Individual Rule 1(C), and the Court's January 12, 2018 order, Dkt. No. 98, only granted NBC leave to file a motion to sever. As such, the Court will not consider NBC's motion to dismiss.

II. REQUEST FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT

Federal Rule of Civil Procedure 15 provides that leave to amend pleadings should "freely" be given "when justice so requires." Fed. R. Civ. P. 15(a)(2). Courts are to grant leave to amend "absent evidence of undue delay, bad faith or dilatory motive on the part of the movant, undue prejudice to the opposing party, or futility." *Monahan v. New York City Dep't of Corrs.*, 214 F.3d 275, 283 (2d Cir. 2000). Because the only defendant who has been served and who is not in default—NBC—consents to Plaintiffs' motion, the motion is granted. Plaintiffs are directed to file an amended complaint in the instant action and in the new, severed action no later than May 4, 2018.

III. CONCLUSION

For the foregoing reasons, NBC's motion to sever, Dkt. No. 105, and Plaintiffs' motion for leave to file a second amended complaint, Dkt. No. 120, are granted. The Clerk of Court is directed to close the motions pending at Dkt. Nos. 105 and 120. The Clerk of Court is further directed to open a new civil case with Plaintiffs McGraw-Hill Global Education Holdings, LLC, Pearson Education, Inc., and Cengage Learning, Inc., and Defendant Nebraska Book Company, Inc., with the applicable filing fee for the new case to be paid by Plaintiffs.

SO ORDERED.

Dated: April 20, 2018
New York, New York



GREGORY H. WOODS
United States District Judge